

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-11308
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 20, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JEREMY BERNARD HARRISON,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:14-CR-5-1

Before REAVLEY, GRAVES, and HO, Circuit Judges.

PER CURIAM:*

Jeremy Bernard Harrison appeals the revocation of his supervised release and his sentence of ten months of imprisonment and 26 months of supervised release. He argues that the district court erred by giving him the opportunity to allocute after revocation of his supervised release but before sentencing. He concedes, however, that his argument is foreclosed by circuit precedent, and he raises the issue to preserve it for further review.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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The Government has filed an unopposed motion for summary affirmance; in the alternative, it requests an extension of time to file its brief. The Government asserts that the parties are in agreement that, under circuit precedent, Harrison’s argument is foreclosed. Summary affirmance is proper, where among other instances, “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).

This court has held that a district court does not plainly err by giving a defendant the opportunity to allocute after revocation but before being sentenced. *United States v. Brooker*, 858 F.3d 983, 987-88 (5th Cir.), *cert. denied*, 138 S. Ct. 346 (2017). One panel of this court may not overrule the decision of a prior panel in the absence of en banc consideration or a superseding Supreme Court decision. *United States v. Lipscomb*, 299 F.3d 303, 313 n.34 (5th Cir. 2002).

In view of the foregoing, the Government’s motion for summary affirmance is GRANTED. The Government’s alternative motion for an extension of time to file a brief is DENIED. The judgment of the district court is AFFIRMED.